

MINUTES
Board of Building & Zoning Appeals
City of Willoughby Hills, Ohio

July 14, 2020

CALL TO ORDER: 8:00 pm

ROLL CALL

PRESENT: Chairman Frank Cihula, Vice Chairman John Klements, Mark Kotoch,
James Michalski and Nico Viola

ALSO PRESENT: Assistant Law Director Thomas Lobe
Clerk Katherine Lloyd.

CORRESPONDENCE

- Letter dated 3/24/20 to Sharon Johnson - Handmade Soaps for Hope RE: Postponement of Case 2020-1 Natural Soap Lab.
 - Notification dated 3/28/20 sent to News-Herald and Communications re: No BZA Meeting called for April 14, 2020 due to COVID-19 concerns. No further meetings scheduled.
 - Notification dated 5/13/20 sent to News-Herald and Communications re: No BZA Meeting called for June 9, 2020 due to COVID-19 concerns.
 - Email dated 5/20/20 from Assistance Engineer Trepal RE: Variance Request- 2823 Stark Dr. – Side Setbacks – attachments.
 - Notification dated 7/4/20 sent to News-Herald and Communications RE: BZA Meeting July 14, 2020.
 - Letter dated 7/5/20 to Sharon Johnson – Handmade Soaps for Hope RE: Confirmation of 7/14/20 BZA Meeting for Case 2020-1.
 - Letter dated 7/5/20 to Christian Haffey – Northcoast Fish House/Lobster Pot RE: Confirmation of 7/14/20 BZA Meeting for Case 2020-2 & 2B.
 - Email dated 7/13/20 from the Building Department RE: Lobster Pot – Case 2020-02 and 02B
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CASE 2020-6

Linda Cover, 2978 Rockefeller Re., requests a variance to construct a new single-family detached dwelling at 2823 Stark Dr. on a 62.5' wide lot with a 9.25' side setback on each side. Section 1133.04(a)(7) of the Codified Ordinances requires a 15' minimum side setback (each side) including any roof overhang.

Notices have been mailed to property owners within 500 ft. of said property. Drawings were available for review in the lobby of City Hall. The appeal was advertised in the News-Herald on July 3, 2020. Social Distancing will be observed. Face masks are required. By order of the Board of Building and Zoning Appeals of the City of Willoughby Hills, Ohio

PRESENT: Linda Cover
Chuck McClintock, Mosaic Construction and Remodeling.

Chairman's Statement:

- Chairman reviewed the procedure for the BZA meeting.
- The Assistant Law Director Thomas Lobe is present to give legal information pertaining to specific questions.
- All parties for Case 2020-06 and those planning to participate in the Public Portion for this case were sworn in by Mr. Lobe.

Stated reason for variance request:

Applicant read from a letter which she had written as part of the variance application. She regards this proposed home as her future retirement home.

Board Discussion:

- Point of clarification. In the plans there are two sheets named A-2. There is an A-2 and an A-2-2.
- Willoughby Hills Code requires 15-foot side setbacks. Other communities do have other setbacks limits.
- Stark Drive was part of Stark Acres which was formed in 1948 during township days. The properties were platted with 62 ½-foot frontages. Some people have 1 ½ lots with the home built across both lots. On Stark Drive, most of the homes have 62 ½-foot frontage. Some properties are double lots. Three to four homes have 15-foot setbacks. There have been a number of BZA appeals on Stark Drive.
- The Board noted that there is a circular notation for a fire pit.
- On sheet A2-2, there is an air condition unit shown next to the house in the setback area. That location will lessen access to the back of the by emergency vehicles or other equipment. It can be moved to the back of the house.

Public Portion opened at 8:31 PM.

Mr. Dayton Davis, 2804 Stark Drive

He lives in the original Stark house. He does not want the sideline variance because of the age character of the neighborhood. He presented a petition of 20 signatures from homeowners on the street who do not favor the variance. They cannot attend this meeting in person either because of work or because the COVID-19 precautions limiting the group size to 10 persons. Applicant's only reason for being given a variance is the written statement that she read in the meeting.

Mr. Lobe: List of names of property owners is accepted as evidence. All received mailing notice of the meeting. Weight of evidence will be given by each Board member and with the vote.

Mr. James Pratt, 2831 Stark Drive

He stated that the new home would be an asset to the street.

Public Portion Closed at 8:50 PM

Audio Recording of the meeting started at this point: (00.00 to 19.18)

Board Comments, continued.

- This is not the first appeal the BZA has had on this street. There is precedent for zoning variances being granted on Stark Drive. There are lots that are undersize and narrower than standard. Cannot comply with modern code.
- Both appellant and contractor confirmed they were drawn for this lot. The house is drawn front to back to accommodate the dimensions of the lot.
- The air conditioning equipment will be tucked behind the house within the building line for the reasons stated earlier. The Assistant Law Director suggested that it should be a condition.

MOTION: Mark Kotoch moved that the Board approve Case 2020.6 as requested for the property at 2382 Stark Dr. to grant a variance for a single family home with a side setback of 9.25 feet on each side due to the narrow lot lines and that it is common on the street to have less than 15 feet per side setbacks with the following stipulation that the air conditioning equipment will be tucked behind the house within the building line.

Seconded by John Klements.

Roll call: Ayes Unanimous.

Motion passes 5/0.

Chairman Cihula declared that the Case 2020-06 request has been granted.

Additional Discussion

The Clerk will send a copy of the signed document presented by Mr. Davis the Chairman and Mr. Davis.

CASE 2020-1 (Audio: 19.18 to 42.00)

Sharon Johnson – Handmade Soaps 4 Hope, for “Natural Soap Lab” requests a variance for a 28.9 sq. ft. wall sign (existing), (on secondary frontage facing S.O.M. Center Rd.), at 2749B SOM Center Rd. on property owned by “34900 Chardon LLC”. Section 1151.05(b) & 1151.05(c)(4) of the Codified Ordinances permits 25.5 sq. ft. of wall sign on this building wall. (secondary frontage).

Notices were mailed to property owners within 500 ft. of said property for the 3/10/20 BZA. Drawings have been available for review in the lobby of City Hall. The appeal was originally advertised in the News-Herald on March 3, 2019.

Social Distancing will be observed; face masks required.

By order of the Board of Building and Zoning Appeals of the City of Willoughby Hills, Ohio.

Chairman’s Statement:

- This case was postponed from the BZA Meeting of March 10, 2020. Sharon Johnson was not at our previous meeting because she was ill. She had sent a notice to the Building Department at 5:00 PM but the Building Department closed at 4:30 PM. The Board did not receive the notice until the following day.
- Everyone has been sworn by Counselor Lobe.

PRESENT: Sharon Johnson, Natural Soap Lab.

Stated reason for variance request: (Audio: 21.30).

We would like to maintain our signage to maintain our foot traffic, which, after the sign was installed and before COVID, we definitely saw the difference the sign makes. My plea is that we can maintain the look of the sign. It has definitely added to our business.

Board Discussion: (Audio: 22.03).

The building has a lot of signs, of one type or another in the windows, on the mansard, on the doors. The applicant has taken some of them down. There is nothing on the one door. Just the front door. From the analysis the Engineer did, the violation is the words, “Handmade Soap”. With the words and the space of that sign, the applicant is 3.4 SF over. If she did not have that, she would be under Code limits.

There was a discussion of the many ways to measure a sign. The Board needs to be consistent with what the rules are.

The Natural Soap Lab letters are mounted straight to the building. There is no sign board mounted on that. The individual letters “Handmade Soap” are mounted directly to the building. The individual letters are boxed, not the whole sign. The Board suggested measuring the stud-mounted letters, rather than the box around the stud-mounted letter. Each letter should be within its own box.

Assistant Law Director Lobe: It speaks for itself. The variance is for this sign as applied, and this sign only

Once a variance is granted. If whatever the variance is granted for stays forever, the variance lasts forever. It is for this business only. If that business changes and the sign square footage goes away, the property does not have a variance any more. This variance is limited to just this business

Public Portion opened at 9:10 PM.

No one spoke in Public Portion.

Public Portion Closed at 9:10 PM

MOTION: Mark Kotoch moved that the Board approve Case 2020-01 as requested to grant a variance for the property located at 2749B SOM Center Rd, the Natural Soap Lab and grant a variance of 3.4 SF of sign over the allowable 25.5 SF with the stipulation that it is for this sign and this sign only, “Homemade Soap.” “In the event another tenant takes over the premises and the “Handmade Soap” signs are removed, the variance no longer exists.”

Seconded by James Michalski

Roll call: Ayes Unanimous.

Motion passes 5/0.

The request is granted. You need to get a Zoning Permit at the Building Department. You take the Zoning Permit to the County to get a Building Permit. Since the signs are already up, we are not sure how they will handle that.

CASES 2020-2 and 2020-0B (Audio: 42.00 to 59.15)

Case 2020-2B (New Appeal filed for tonight's meeting, July 14, 20)

Mr. Christian Haffey – Northcoast Fish House/Lobster Pot, 2747 SOM Center Rd. requests a variance for a second freestanding sign “The Lobster Pot” (6 SF) located near the southeast corner of the outdoor patio area. Section 1151.05(e), Schedule 1151.05(e)(a) of the Codified Ordinances limits the number of freestanding signs for this property to one. Notices have been mailed to property owners within 500 ft. of said property. Drawings were available for review in the lobby of City Hall. The appeal was advertised in the News-Herald on July 3, 2020. Social Distancing will be observed. Face masks are required.

By order of the Board of Building and Zoning Appeals of the City of Willoughby Hills, Ohio.

CASE 2020-2 (Continued from BZA Meeting 3-10-20)

Mr. Christian Haffey – Northcoast Fish House/Lobster Pot, 2747 SOM Center Rd. requests a variance for a 50 SF wall sign (existing) on the east (secondary frontage); & a 17.5 SF wall sign (existing) on the north wall (secondary frontage). Section 1151.05(b) & 1151.05 (c)(4) of the Codified Ordinances permits a total of 44.0 SF on secondary frontage.

Notices were mailed to property owners within 500 ft. of said property. Drawings have been available for review in the lobby of City Hall. The appeal was originally advertised in the News-Herald on March 3, 2019. Social Distancing will be observed; face masks required.

By order of the Board of Building and Zoning Appeals of the City of Willoughby Hills, Ohio.

PRESENT: No One Present at the meeting.

Chairman's Statement:

- The Board received a letter from Christian Haffey, the owner, giving permission to Kevin Johnson, a minority owner, to represent the Lobster Pot and giving him full authority to speak on his behalf for the first meeting. Permission continues for this appeal, 2020-02B.
- Contacting Mr. Haffey has been quite difficult. The business is not currently open on Sunday, Monday or Tuesday. The business phone was given as his contact phone number.
- Mr. Kevin Johnson, the minority partner, has a full time job elsewhere. No contact information was given in the authorization letter. Email dated 7/13/20 from Building Department, provided a contact phone number.

Stated reason for variance request:

No representative present.

Board Discussion

Chairman Cihula contacted Kevin Johnson. They discussed a solution that could preclude the need for eliminating all or part of the appeal. Mr. Johnson was advised about their options. The Board had discussed some of that, primarily the calculating the square footage of the signage on the front of the building.

- They are allowed the 2-ft. sign by the delivery entrance “by right” if they can fit the name and address on that sign.
- He was also advised that they could withdraw the 17 ½ foot sign because the sign on that wall is on a board fastened to the wall, which means the whole board is the sign, not just the letters.
- On the east wall, the sign is the same construction. It is a sign board with the information on it and mounted on the contrasting wall.
- Case 2020-02B is the 3 square foot ground sign. That is the appeal that was advertised for tonight.
- Kevin Johnson talked to Mr. Haffey and called the Chairman today. They still want an opportunity to talk with the Board. They requested postponement until the August 11, 2020 meeting.

MOTION for Case 2020-02B:

John Klements moved that the Board postpone Case 2020-02B at the appellant's request for the property at 2747 SOM Center Rd. for the 3 square foot ground sign at the southeast corner of the parking lot until the meeting of August 11, 2020. If there are no new appeals for that meeting, they will be first on the agenda. If there is, they will be second.

Seconded by Mark Kotoch.

Additional Discussion:

- Concern expressed: Applicant already has signs up for six months. They could postpone the next meeting again.
- The Board will put a limit of one more continuance at most. If they do postpone after that, the Board should proceed with a letter of noncompliance to the applicant.
- There were some extenuating circumstances.
 - The little sign was not advertised in the first appeal.
 - Most recently, they just received a registered letter on 7/13/20 and could not attend. Return receipt for the registered letter has not yet been received. It is uncertain when it was delivered.
 - The Building Department Clerk has a stack of receipts for registered letters that have come back with carrier's signature information, not the signature of the recipient. Eventually the certified receipt does come back to the office.
- Email dated 7/13/20 from Building Department to BZA Clerk was read into the record by Chairman Cihula. "Kevin Johnson stopped into the office today to let us know that he cannot attend the meeting tomorrow night. The certified letter was just received today, 7/13/20 when they checked their mail. It was in their mailbox and the carrier did not have them sign for it. Kevin said he received no other communication about this meeting so this is the first time he had been aware of it. He is unable to attend due to prior commitments that he is unable to get out of.

Kevin has asked that you call him at this phone number and set an appointment to visit. The times you have stopped in, the restaurant was busy. Chris could not break away to meet with you. Kevin works a full time job elsewhere, but is a business partner that handles these things. He is happy to meet with you but please set up an appointment." Kevin Johnson was copied in.

Roll call: Ayes Unanimous.

Motion passes 5/0.

Chairman Cihula declared the hearing on this sign, Case 2020-02B postponed until the August 11, 2020 meeting.

MOTION for Case 2020-02:

John Klements moved that, at the appellant's request, the Board postpone Case 2020-02 for the property at 2747 SOM Center Rd. until the next scheduled BZA meeting.

Seconded by Mark Kotoch.

Roll call: Ayes Unanimous.

Motion passes 5/0.

Chairman Cihula declared that the hearing on Case 2020-02 is postponed until the next scheduled BZA meeting.

There was no Public Portion for Case 2020-02 due to no public present.

UNFINISHED BUSINESS: (Audio: 59.15)

Format of the Minutes –

Mr. Klements: The Board has been discussing the format of the minutes for quite some time.

- At the March 10, 2020, it was decided that the Chairman and Vice Chairman arrange a meeting with the Law Director.
- They had a meeting with Assistant Law Director Tom Lobe about the middle of March for discussion of whether the minutes should continue as they have been traditionally or should the minutes become the recording and the written part of the minutes become the directory pointing to the recording. That would expedite the whole Minutes process. By using the recording of the minutes, we have everything as it is said, not as it is transcribed.

- To assist the Board with this determination, the Law Director was invited to give the legal reasons why the minutes are such an important documentation of what the Board does.

There was discussion on the principle that “minutes should reflect only the action taken, not words spoken” versus including a bit of discussion preceding the motion to show why the motion is made on a case. The minutes have been quite lengthy. We as a Board need to give clear direction to our clerk about what we are expecting. We brought Mr. Lobe in to make sure everyone is comfortable with the legal aspects.

Mr. Lobe: The law requires that the minutes be almost ‘verbatim’. If anyone appeals anything from this quasi-judicial Board, there needs to be a record if they have to go to court.

- All the recordings are already saved to CD. At his advice, City Council made the tape recording the ‘official’ record of a meeting.
- He recommends a written index or directory of the recording be made to help people go back and listen to the audio recording of the meeting. The recording should be the ‘official’ record going forward.
- He explained that if a vote needs to be justified and a good record can be shown, the court should not substitute its opinion for the Board’s vote. If people are sworn in and cross examination, discourse and introduction of exhibits are allowed, the court will not reverse the Board’s opinion. The tape is always better than someone’s notes.
- A written Index to the Audio Record can include clarifications and items that you want in the record, including a timing index.
- Current court cases have used a tape recording or a video of the meeting to justify the vote. There are 30 days to appeal a case once the official record has been approved. The BZA audio recording can be uploaded to the website and declared the official record that night.

MOTION: John Klements moved that the Board declare the audio recording to be the official record for the meetings of the BZA.
Seconded by Mark Kotoch.
Voice vote: Ayes unanimous.
Motion passes 5/0.

MOTION: John Klements moved that the Board create a new document to the BZA which will be called the Index to the Minutes that will reflect actions taken, not necessarily the spoken word.
Seconded by Mark Kotoch.
Voice vote: Ayes unanimous.
Motion passes 5/0.
In the future, the Agenda will list review and acceptance of the Index to the Minutes by the Board.⁷

NEW BUSINESS

None

CHAIRMAN'S COMMENTS

None

MOTION: Mark Kotoch moved to adjourn.
Seconded by John Klements.
Voice vote: Ayes unanimous.
Motion passes 5/0.

Meeting adjourned at 10:20 PM.

Note that it is the policy of the Board to make site visits to guide them in making their decisions.
Note that BZA meetings are recorded and recordings are considered a public record.

Note that the Audio Recording is the official record for the meetings of the BZA, as of 7/14/20 M.

Katherine Lloyd, Clerk
Reviewed by BZA Board on: 8/11/20